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*DISH Technologies L.L.C. and Sling TV L.L.C.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MG Freesites LTD,

Plaintiff,

v.

DISH Technologies L.L.C and Sling  
TV L.L.C.,

Defendants.

Case No.: 3:23-cv-03674-EMC

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE ISO DISH'S  
OPPOSITION TO MG FREESITES  
LTD'S MOTION TO AMEND THE  
CASE CAPTION OR, IN THE  
ALTERNATIVE, FOR LEAVE TO  
FILE SECOND AMENDED  
COMPLAINT**

Hearing: December 4, 2023  
Time: 9:00 a.m.  
Judge: Hon. Edward M. Chen  
Trial Date: None Set  
Courtroom: 5, 17<sup>th</sup> Floor

## **NOTICE OF MOTION AND MOTION**

Defendants DISH Technologies L.L.C. and Sling TV L.L.C. (collectively, “DISH”) hereby gives notice of its request that the Court take judicial notice, pursuant to Federal Rule of Evidence 201, of certain judicial decisions and hearing transcripts in the *Fleites v. MindGeek S.a.r.l.* case, No. 2:21-cv-04920-CJC-ADS (“*Fleites*”). DISH makes this request both as a supplement to its statements in the November 16, 2023 Case Management Conference (“CMC”) and in support of its Opposition to MG Freesites Ltd’s (“MG Freesites”) Motion to Amend the Case Caption or, Alternatively, For Leave to File A Second Amended Complaint (“Motion to Amend the Case Caption”). True and correct copies of the documents for which DISH requests the Court take judicial notice are attached as exhibits hereto along with the Declaration of G. Hopkins Guy, III.

## **STATEMENT OF RELIEF SOUGHT**

DISH requests that the Court take judicial notice of certain recent judicial decisions and hearing transcripts memorializing certain judicial proceedings in the *Fleites* case.<sup>1</sup>

## **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

This request is made pursuant to Federal Rule of Evidence 201, and based on this notice and motion, the following points and authorities, the declaration of G. Hopkins Guy, III in support of this motion filed herewith and the exhibits attached thereto, and reply papers that may be filed and other such matters as may be brought before the Court prior to or at the hearing on this motion.

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<sup>1</sup> In the parties’ November 16, 2023, Case Management Conference, counsel for DISH notified the Court of the *Fleites* case, including statements made by Judge Cormac Carney, Magistrate Judge Autumn Spaeth, and counsel. This Request for Judicial Notice of those statements supplements the statements DISH made in the Case Management Conference and notifies the Court of the sources for those statements ahead of the hearing on the Motion to Amend the Case Caption, which was set by the Court during the Case Management Conference.

## MEMORANDUM OF POINTS AND AUTHORITIES

As DISH discussed during the November 16, 2023, CMC, MindGeek’s<sup>2</sup> recent efforts to “re-brand” itself as “Aylo” may have involved more than merely administratively replacing “MG” or “MindGeek” with “Aylo.” Ex. A, Nov. 16, 2023 Tr, at 17:6-19. DISH objects to the extent that the newly identified Aylo entities do not maintain the same financial status, assets, or capitalization, as the MindGeek entities. DISH submits this judicial notice to confirm that DISH’s concerns are not unique; other Courts in California are laboring to understand MindGeek, its corporate structure, its entities’ operations, its entities’ capitalization, and more. To that end, DISH respectfully requests that the Court take judicial notice of the following documents (and the highlighted content therein) from the *Fleites* case involving the same MG Freesites Ltd and MG Premium Ltd parties here:

1. D.I. 167 (Order Directing the MindGeek Defendants to Submit to Jurisdictional Discovery Until December 30, 2022) (Carney, J) (attached hereto as Exhibit B).
2. D.I. 253 (Transcript of January 11, 2023 Hearing Re: Defendant MindGeek Entities’ Motion to Compel Responses to Interrogatories and Requests for Production of Documents [Dkt. No. 223]; Plaintiffs’ Motion to Compel Defendant MindGeek Entities’ Responses to Plaintiffs’ First Request for Production of Documents and Interrogatories [Dkt. No. 224]) (attached hereto as Exhibit C).
3. D.I. 312 (Transcript of March 8, 2023 Hearing of Plaintiffs’ Motions to Compel [261], [264], [267], [274]) (attached hereto as Exhibit D).

Federal Rule of Evidence 201 provides that “[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). “Judicially noticeable facts include ‘court records from another case’ and ‘party admissions.’” *Aldini AG v. Silvaco, Inc. et al.*, Case No. 4:21-cv-06423-JST, D.I. 42 at 3 (quotations omitted) (taking judicial notice of party declarations).

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<sup>2</sup> The term “MindGeek,” according to the First Amended Complaint (“FAC”), can refer to “any one of a number of different legal entities, such as MG Freesites Ltd ... or MG Premium Ltd.” D.I. 29 ¶66.

The *Fleites* judicial orders and hearing transcripts meet this standard. *See Hernandez v. Wells Fargo & Co.*, Case No. 18-cv-07354-WHA, 2019 WL 3017657, at \*5 (N.D. Cal. July 10, 2019) (treating statements previously made by a party in a different lawsuit as judicially noticeable party admissions). As stated in the *Fleites* judicial notice material:

“The Court also has some concern with respect to the capitalization or solvency of the MindGeek Entity Defendants. Plaintiff alleges that “MindGeek” has accrued millions of dollars of revenue in the past three to five years while operating at “massive” net losses, owing to various schemes in which some MindGeek Defendants bleed money out of others through fraudulent transactions. (See, e.g., id. ¶¶ 131-37.)” *Fleites*, D.I. 167 at 4 (emphasis added).

“And therein lies the possible unfairness in dismissing any of the MindGeek Defendants at this point in the proceedings: the possibility that judgment will be entered against remaining insolvent or undercapitalized entities. If the jury finds that the MindGeek Defendants engaged in schemes which diverted money from revenue generating MindGeek entities in contravention of corporate formalities, the Court is concerned with the ability of the non-objecting MindGeek Entity Defendants to satisfy the damages awarded by a jury.” *Fleites*, D.I. 167 at 4 (emphasis added).

“Conspicuously, the MindGeek Individual Defendants do not submit their own declarations to rebut these allegations.” *Fleites*, D.I. 167 at 5 (emphasis added).

## II. CONCLUSION

For these reasons, DISH respectfully requests that this Court judicially notice the above-mentioned orders and hearing transcripts.

Date: November 30, 2023

Respectfully submitted,

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